Re CA 75-1996 & 77-1997
Ex Suss 77

Dear Dave, 10/16/78

Not to long ago, with tongue in cheek and in writing Jim about what I think our approach would be in FOIA cases now, I paraphrased John Mitchel: When the going gets tough those who are not tough get tough. More or less.

While awaiting a call that would have come through before now if there had not been a new pope, a few words about what jim called me for about an hour and a half ago. I'd been to Washington, to the dentist. He met me there and I gave him a memo on the Government's brief in the spectro appeal. The ride I had meant I had to return immediately. But I knew it would be a good day because the visit to the dentist was about what requires no dental work.

I wanted exercise and I have a new tool, a 20cycle power scythe/grass and brush cutter. Forecast for rain meant no outside walking to amount to much so there I was having agood time with my new toy and Jim called.

"Are you sitting down?" He asked. "Yup, with my feet up. What's the good news?"
"They're giving us the transcripts."

The Government lawyer had phoned to tell him this and to say it mooted the case. Jim did not think the cases is mooted, nor do I.

He will oppose any Motion to Dismess they may make. He will not agree to give them another time extension. And I have a notion the appeals court may agree with us.

He is going to ask for triple-damage type compensation for this time and some recompense for me. I also favor what we have not talked about, seeking to use the punitive provisions of the amended Act.

I askedhim to phone the Government attorney and tell her that I exoect first use as a right and as a means of avoiding any more news management on the subject, which includes Nosenko. She told him she couldn't guarantee it. He told here there is something he can guarantee - a tort action. We await word. And I don t know when.

Several years ago I told David Martin, then with AP, that my own writing was past the point where I required the transcripts for it, that I was in a public role and that in this role I want to arrange to give all the stuff away on a fair basis that permits the press to have enough time for unrushed reporting. I said I'd pay for the space for a press conference but could not pay for the cost of the xeroxing to give free copies to the press. I phoned him at Newsweek and he's not in. I left word that I'm ready to proceed on the old promise.

And if the call overdue by 50 minutes were not important I'd be on the phone now seeking to make other arrangements.

We have filed some tough stuff lately and we have not heard a legitimate peep. Give opposed the 1996 Motion to Strike, by the way, with my affidavit-of-a weekend, as they all are these days. They forced us to be more vigorous than he, suffering Montezuma's course, had been in court. I've given him a fairly tough one against the CIA in 77-1997 and he filed it unread. I gave him the seconf part today.

There is in this transcripts case what jim may have thought of but hasn't mentioned, probably because other matters are on the front burner. It represents a powerful blow against Summary Judgement in FOIA cases. They prevailed at the district court on such a motion and now have capitulated. (I hope the judge realizes what they have done to him - and says something. We'll be back under any circumstances seeling the fees provided for under the amended Act.) Of course it was all a fraud upon the court and upon us. How I wish this had been a Resell case!

One of these dishonest DJ lawyers named Axelrad has misrepresented to Gesell and embarrassed him when the case was remanded with proof of the misrepresentation. Gesell chewed him out and recused himself. I think it was a CIA case, Phillippi.

Since then I've been telling Jim, on occasions I considered appropriate, "They've given us an Axelrad - lets put wheels on it."

I got stacksa wheels. Including from junked lawnmowers. Just put some old ones on my newest mower. Old wheels are better. That's also a pun! But my newest mower IS or more use this way. That is how I chewed up all that tall growth the remains of which you saw.

Hours later: the call was on King records appeals, lab stuff only.

I felt I should let Bud know and also what I plan. He was very kind. He offered me his conference room for the press conference. If other arrangements have not been made I'll probably save $75. that way and will accept.

Best,